BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DUNG NOC NGUYEN	)	
Claimant	)	
VS.	)	
	)	Docket No. 236,502
PRECISION METALCRAFT, INC.	)	
Respondent	)	
AND	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the February 16, 2001 Award entered by Administrative Law Judge John D. Clark. The Board heard oral argument in Wichita, Kansas, on August 10, 2001.

APPEARANCES

Gary E. Patterson of Wichita, Kansas, appeared for claimant. Lyndon V. Vix of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant alleges she developed bilateral carpal tunnel syndrome in her wrists as the result of repetitive hand movement, which she allegedly performed through her last day of work with respondent on July 22, 1998. In the February 16, 2001 Award, Judge Clark found the appropriate date of accident for computing the benefits in this claim was July 22, 1998. The Judge then awarded claimant a 12 percent permanent partial general disability, which was based upon claimant's whole body functional impairment rating.

The respondent and its insurance carrier contend Judge Clark erred. They argue the appropriate date of accident is either March 12, 1998, when claimant first missed work due to her injuries, or May 1998, when claimant was assigned different job duties. Should the Board find that July 22, 1998, is the appropriate date of accident for computing benefits in this claim, respondent and its insurance carrier request that only respondent be held responsible for the benefits to which claimant was entitled before June 1, 1998, which is the date the insurance carrier began providing respondent with workers compensation insurance coverage.

Conversely, claimant requests the Board to affirm the February 16, 2001 Award in all respects.

The issues before the Board on this appeal are the appropriate date of accident for computing the benefits due claimant in this repetitive use injury claim and whether the insurance carrier is liable for all or any part of those benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The Award should be modified to absolve the insurance carrier of liability for any medical expenses incurred by claimant for treatment of her upper extremities before the insurance carrier began providing respondent workers compensation insurance coverage on June 1, 1998. Likewise, the Award should be modified to absolve the insurance carrier of liability for any temporary total disability benefits representing any period before June 1, 1998. But respondent remains responsible for all the benefits due claimant, including those from which the insurance carrier is absolved.[1]

2. Claimant performed repetitive work activities with her hands while working for respondent and, as a result, developed repetitive use injuries in her upper extremities. On approximately March 12, 1998, claimant first missed work because of her injuries. In approximately May 1998, respondent assigned claimant to the job of machine operator. But despite the job move, claimant continued to perform repetitive hand activities and her bilateral upper extremity condition continued to worsen. On approximately July 22, 1998, claimant left respondent's employment due to her work-related upper extremity injuries after declining to attempt to perform an easier job.

3. The Board concludes that the appropriate date of accident for the series of mini-traumas and the repetitive use injuries involved in this claim is claimant's last date of work on approximately July 22, 1998. First, the Board concludes that claimant performed hand-intensive work through that date and, therefore, continued to experience mini-traumas and

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[1] See *Lott-Edwards v. Americold Corp.*, 27 Kan. App. 2d 689, 6 P.3d 947 (2000).

repetitive use injuries until her termination. The record establishes that claimant continued to perform work with her hands until she left respondent's employment, despite being transferred to a different job. Second, the Board concludes that claimant left work because of her injuries and disability and, therefore, *Berry*[2] dictates that claimant's last day of work for respondent is the appropriate accident date for computing the benefits due in this claim.

4. Following creation of the bright line rule in the 1994 *Berry* decision, the appellate courts have grappled with determining the date of accident for repetitive use injuries. In *Treaster*,[3] which is one of the most recent decisions on point, the Kansas Supreme Court held that the appropriate date of accident for injuries caused by repetitive use or mini-traumas is the last date that a worker (1) performs services or work for an employer or (2) is unable to continue a particular job and moves to an accommodated position. *Treaster* can also be construed as focusing upon the offending work activity that caused the worker's injury as it holds that the appropriate date of accident for a repetitive use injury can be the last date that the worker performed his or her work duties before being moved to a substantially different accommodated position.

> Because of the complexities of determining the date of injury in a repetitive use injury, a carpal tunnel syndrome, or a micro-trauma case that is the direct result of claimant's continued pain and suffering, the process is simplified and made more certain if the date from which compensation flows is the last date that a claimant performs services or work for his or her employer or is unable to continue a particular job and moves to an accommodated position.[4]
>
> Where an accommodated position is offered and accepted that is not substantially the same as the previous position the claimant occupied, the date of accident or occurrence in a repetitive use injury, a carpal tunnel syndrome, or a micro-trauma case is the last day the claimant performed the earlier work tasks.[5]

But in *Treaster*, the Kansas Supreme Court also approved the principles set forth in *Berry*, in which the Court of Appeals held that the date of accident for a repetitive trauma injury is the last day worked when the worker leaves work because of the injury. As indicated above, not only did claimant sustain additional injury through her last day of working for respondent by continuing to perform repetitive hand movement but, in addition,

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[2] *Berry v. Boeing Military Airplanes*, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

[3] *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

[4] *Treaster*, syl. 3.

[5] *Treaster*, syl. 4.

claimant left respondent's employment because of her injuries. Therefore, the last day that claimant worked for respondent is the appropriate date of accident.

5. The Board adopts the findings and conclusions set forth in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, the Board modifies the February 16, 2001 Award by absolving the insurance carrier from liability for any medical expense incurred by claimant for treatment of her injuries before June 1, 1998, and for any temporary total disability compensation that became due before that same date. The Award is affirmed in all other respects.

IT IS SO ORDERED.

Dated this ____ day of August 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary E. Patterson, Wichita, KS
Lyndon V. Vix, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director